

# Exhibit Z



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

NETLIST, INC., ( CAUSE NO. 2:21-CV-463-JRG  
)  
Plaintiff, ( )  
vs. ( )  
SAMSUNG ELECTRONICS CO., LTD., ( )  
et al., ( ) MARSHALL, TEXAS  
( MARCH 28, 2023  
Defendants. ) 9:00 A.M.

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VOLUME 1

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PRETRIAL CONFERENCE  
BEFORE THE HONORABLE RODNEY GILSTRAP  
UNITED STATES CHIEF DISTRICT JUDGE

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1 you know, as we're working together, it's just sort of a  
2 sharing of information. It was not obviously accusing anyone  
3 of infringement because we were licensed.

4 THE COURT: All right. Now, if you consider the  
5 Court's prior ruling that up to the termination of the JDLA on  
6 July the 15th, 2020, Samsung was licensed pursuant to the  
7 terms of the JDLA, then we're not talking about willful  
8 infringement prior to July 15th, 2020, under any scenario.

9 Is that your understanding?

10 MS. DEGNAN: You are absolutely right, Your Honor.

11 Could we have slide 27? There's a timeline I think --

12 THE COURT: So really we're talking about 2020 until  
13 suit's filed.

14 MS. DEGNAN: We are. And so let's just jump into  
15 this, what is the good faith defense, because that is, of  
16 course, a reason that would prevent a willful finding here.  
17 And we think no reasonable juror could find we're willful  
18 infringers given -- given this license. So, yes, certainly  
19 through the termination on July 15th, 2020.

20 But I think it's important to recognize is that between  
21 July 15th, 2020, and the final judgment in the California  
22 case, this was a hotly-disputed issue. They were claiming  
23 termination, we were saying it was unlawful, we thought the  
24 termination even if there was a breach, it was not material  
25 justifying termination.

1           So during this period of time, subjective intent was of  
2       -- of Samsung was that we are being wrongfully denied our  
3       license and we're fighting to keep it.

4           And during this period, we should point out that there  
5       was a jury trial, and the jury awarded on December 3rd, 2021,  
6       no damages for this breach that Netlist said happened. That,  
7       again, looks like it's not material. If there's no damages,  
8       then there shouldn't have been a termination.

9           And so we would say that this entire period through at  
10      least the end of the action in California, no reasonable juror  
11      could find that we were -- had the subjective intent to  
12      deliberately infringe because we had a license, we were  
13      fighting to prevent Netlist from taking it away during that  
14      entire period.

15           And I would submit even after, while we appealed what we  
16      would consider a miscarriage of justice, to the Ninth Circuit  
17      we still had a good faith belief that, you know, we have been  
18      denied a license that we bought and paid for, it was a  
19      perpetual license, and that that prevents any sort of  
20      reasonable jury from finding infringement both pre- and  
21      post-suit.

22           THE COURT: Let me go back a minute since you've got  
23      this timeline on the screen.

24           Now, I don't want to limit or backtrack on my prior  
25      statement that, during the period of licensure, Samsung really

1 can't infringe if they're licensed, and if they can't  
2 infringe, they can't willfully infringe.

3 But I have left open the issue for the jury to decide  
4 whether these HBM products are foundry products which would  
5 not be covered by the license and, therefore, could be subject  
6 to infringement. And if those can be subject to infringement  
7 under that construction or scenario, then there's potentially  
8 willful infringement.

9 So as to what's covered by the license prior to 2020, I'm  
10 satisfied that willfulness is out. What's not covered by the  
11 license prior to 2020 is fair game for willfulness. And then  
12 we had the issue of post-July 15, 2020, up until the time  
13 suit's filed.

14 And I understand your arguments about your sense of  
15 justice in the Central District of California and the Ninth  
16 Circuit. You are entitled to your opinions. I'm not sure  
17 that's dispositive on the issue of willfulness or not.

18 MS. DEGNAN: So let me just respond to this issue of  
19 products that were foundry products. And so I think what -- I  
20 think what we're going to see --

21 THE COURT: I can see that fight coming.

22 MS. DEGNAN: I can see --

23 THE COURT: I think everybody in the room can see  
24 that fight coming.

25 MS. DEGNAN: But to clarify, it's not really the

1       rea subjective intent to infringe patents that hadn't even  
2       issued during the negotiations and the license for the JDLA.

3               So you can't tie this activity that they spent many  
4       minutes showing you in the slides to the mens rea requirement  
5       post-termination of the license. So there's nothing that  
6       springs back into effect at that time.

7               And so it's my way of explaining why all the slides you  
8       just looked at, all those evidence, is actually not relevant  
9       to the issue of willfulness because those patents had not  
10      issued. And by the time they had issued, even if there was  
11      some desire to license a patent that was in existence in 2015,  
12      that does not mean we had the subjective intent to infringe  
13      completely different patents in 2020.

14              So I guess I'll leave it with that. That's sort of high  
15      level response to counsel's remarks.

16              THE COURT: All right. Thank you, Counsel.

17              All right. With regard to Document 200 and Samsung's  
18      motion for summary judgment of no willfulness, as to the  
19      period prior to July 15th, 2020, and as to what was covered by  
20      the license granted through the JDLA, the Court grants summary  
21      judgment that there was no willful infringement during the  
22      period that whatever was licensed by the JDLA remained  
23      licensed by the JDLA up until and through or as of July 15th,  
24      2020.

25              Post-July 15th, 2020, the Court finds that there are

1 material questions of fact under the totality of the  
2 circumstances standard imposed on the willfulness  
3 determination that preclude the entry of summary judgment, and  
4 I'm otherwise going to deny the Defendants' motion.

5 Now, that should cover all of document 200. We've got a  
6 series of motions to strike coming up next. We're going to  
7 take a short recess, and we'll turn to those when I return to  
8 the bench.

9 During this recess, I'd like to see Mr. Cordell and Ms.  
10 Smith together with Mr. Sheasby and Ms. Truelove in chambers.

11 The Court stands in recess.

12 (Brief recess.)

13 THE COURT: Be seated, please.

14 All right. As I said, Counsel, there's a series of  
15 several motions to strike. I don't know that the order is  
16 particularly critical.

17 Why don't we jump into the deep end of the pool and start  
18 with Document 205, Samsung's motion to strike Kennedy reports,  
19 Kennedy being Netlist's damages expert.

20 Let me hear from Samsung first.

21 MR. CORDELL: Thank you, Your Honor. Ruffin Cordell  
22 for Samsung. May I proceed?

23 THE COURT: Please do.

24 MR. CORDELL: Mindful of the time that we have, I  
25 will offer my apologies on the front end that this is not the